notice of not less than one month before the cessation or notice of less than one month.

(c) What was the date on which the Defendant gave the notice.

(d) Depending on the answers to questions (b) and (c), whether the Defendant had failed to comply with section 83(3).

The above issues have to be tried, and I therefore order that the summary judgment be set aside and that this case be sent back to the Sessions Court for trial of the issues.

There is another reason why the summary judgment should be set aside. Section 107(4) provides –

"An employer who fails to comply with section 83(2), (3), (4) or (5) or this section with respect to an employee of his shall be liable, in the case of a failure to comply with section 83(2), (3), (4) or (5), to pay the full amount of tax which by reason of his failure cannot be recovered from the employee ... ."

The liability of the employer arises if –

(i) the employer fails to comply with section 83(3), and

(ii) by reason of that failure the tax cannot be recovered from the employee.

In an action brought against an employer to recover tax of his employee where the employer has failed to comply with section 83(3) in respect of that employee, it must be pleaded and shown that the tax cannot be recovered from the employee by reason of that failure. In the present case there is no allegation in the Statement of Claim that S.'s tax cannot be recovered from him by reason of the defendant's failure to comply with section 83(3).

The appeal is allowed. Costs to the defendant (appellant) in any event.

Appeal allowed.

Solicitors: *Kanesulingam & Co.*

UNIVERSITY OF MALAYA v. LEE MING CHONG

[A.C.J. (Wan Hamzah S.C.J.) June 18, 1985]

[Kuala Lumpur – Civil Appeal No. 2 of 1977]

Contract – Scholarship agreement – To serve University upon return – "Service" distinguished from "appointment" – Whether breach – Whether liable for damages – Contracts Act 1950, s.4.

University of Malaya – Scholarship agreement – To serve University upon return – Notice to terminate service at end of initial contract – Whether breach.

In 1964 the University of Malaya ("the University") appointed Lee Ming Chong ("Lee") to a scholarship offered by the Canadian government under the Colombo Plan, to pursue a course of study in Canada for the degree of Master of Business Administration and Accounting. A scholarship agreement was entered into on July 26, 1964 between Lee and the University. There were also two sureties for Lee. The agreement provided *inter alia*, that if required by the University, Lee upon his return will serve the University for a period of not less than five years from the date of his first appointment and a breach of this term without the consent of the University will render Lee and his sureties liable to pay the University on demand a sum of $5000.

On his return, Lee was appointed Assistant Lecturer in the Faculty of Economics and Administration on June 6, 1966; this service contract was to expire on January 1, 1969. In a letter by the University dated July 9, 1968, Lee was promoted to Lecturer and confirmed in his appointment as Lecturer in the Department of Economics and Administration with effect from February 1, 1969. Lee declined the offer and gave notice of his intention to terminate his service with the University at the end of his initial contract period on January 1, 1969 in a letter to the University dated October 18, 1968. The University then demanded that the sum of $5000 be paid in accordance with the scholarship agreement as Lee had only been in its service for 2½ years and that he was leaving the University without its consent.

The University brought an action in the Sessions Court against Lee claiming the sum of $5000 for his breach of undertaking in the scholarship agreement to serve the University for a period of not less than five years. In his Statement of Defence, Lee contended, *inter alia*, that:

(1) the University entered into the scholarship agreement as agent on behalf of the Canadian Government and therefore the University itself could not enforce it;

(2) the scholarship agreement was void as it was made without consideration; and

(3) he had completely fulfilled or performed the scholarship agreement, having entered into the service agreement.

Its claim was dismissed and the University appealed.

Held, allowing the appeal: (1) it is more appropriate that the University should be the principal party in such agreement. Nowhere is it stated that the University was acting as agent of the Canadian government;

(2) it is clear that there was consideration on the part of the University. The fact that the University appointed him to the scholarship was the consideration on its part for his promise to serve it for five years after completing the course. Even if there was no consideration on the part of the University, section 4 of the Contracts (Amendment) Act, 1976 provides that notwithstanding anything to the contrary contained in the Contracts Act no scholarship agreement shall be invalidated on the ground that it lacks consideration;

(3) service is not the same thing as post or appointment. Lee gave notice to purportedly terminate his *service* with the University. This he cannot legally do because there is no provision in the scholarship agreement or in the service agreement for terminating his service.

[*Editorial Note:* Appeal against this judgment is pending in the Supreme Court, *vide* Supreme Court Civil Appeal No. 242 of 1985.]

CIVIL APPEAL

C.V. Das (*Nagarajah* with him) for the appellant/plaintiff.

P. Sundari (Miss) (*Y.C. Lee* with her) for the respondent/defendant.

Cur. Adv. Vult.

Wan Hamzah S.C.J.: In 1964 the University of Malaya ("the University") appointed Lee Ming Chong ("Lee") to a scholarship offered by the Canadian Government under the Colombo Plan, to pursue a course of study in Canada for the degree of Master of Business Administration And Accounting. A scholarship agreement was entered into on July 26, 1964 between Lee and the University whereby Lee undertook to diligently pursue the course of study and complete it within two years or such longer time as the University may approve. Two other persons also signed the agreement as sureties for Lee. In clause 1(c)(i) the parties agreed as follows:

"... that if required to do so by the University, at any time within twelve calendar months of his return to the Federation of Malaya, he (*i.e.* Lee) will serve the University in any post consistent with the qualification obtained by him to which he may be appointed for a period of not less than five years from the date of his first appointment upon the terms and conditions for the time usually applicable to such post and at a salary in accordance with the scales of salaries for the time being in force relating thereto".

In clause 3(iii) of the agreement the parties agreed as follows:

"If the student (*i.e.* Lee) resigns or leaves the service of the University in breach of his agreement under paragraph 1(c) of this Agreement without the consent of the University, the student and the sureties shall be jointly and severally liable for themselves, their heirs, executors or assignees to pay the University on demand a sum of $5,000."

Lee completed the course of study in due time and obtained the degree and returned to this country on June 6, 1966. In a letter dated June 7, 1966, the University offered Lee appointment to the post of Assistant Lecturer in the Faculty of Economics and Administration. Details about salary and other benefits were stated in the letter, and a copy of document No. 6041 was enclosed with the letter, describing the general terms and conditions under which appointments in the University are made. Lee accepted the offer, and a service agreement was entered into between Lee and the University. Under clause 2 of the service agreement the appointment commenced from June 6, 1966 and would continue up to the last day of the month in which the Third Term of the 1968/1969 academic session would end. This last day turned out to be January 31, 1969. The service agreement contains the following terms in clause 13:

"The appointee may at any time terminate his appointment by giving not less than three months notice in writing to the Vice-Chancellor of the University and upon termination the appointee shall be entitled to receive his salary up to the date of such termination together with such other benefits to which he may be entitled under rules for the time being in force provided that if the Council should require the appointee to remain in employment in the University until the end of the academic year he shall continue in such employment until the end of such period."

Long before the expiry of his appointment as assistant lecturer, Lee received a letter dated April 30, 1968 from the Pegawai Kakitangan of the University asking him to complete a certain form to enable the Confirmation and Promotions Board of the University to consider his case for confirmation on the permanent establishment and promotion to lectureship. On May 8, 1968 Lee wrote to the Chairman of the Confirmation and Promotions Board requesting for three increments above the lowest point of entry in the lecturer's scale of salary. Lee's letter reads as follows:

"With regard to my application for confirmation on the permanent establishment and promotion to a Lectureship, I wish to have your indulgence to draw the attention of the Board to the fact that prior to my initial university appointment, I have had several years of teaching experience.

I had 4¾ years of post-qualification teaching experience in schools in West Malaysia. Further, for two years in 1964-66, I was appointed Laboratory Instructor and Marker in the Division of Accounting, Faculty of Commerce and Business Administration, University of Br. Columbia, Canada. My duties as a Lab. Instructor and Marker were to assist the Accounting Professor in conducting and instructing accounting laboratory classes and mark students' weekly accounting assignments. Reference of my work in this area could be made to Prof. A. Beedle, Chairman, Division of Accounting, University of Br. Columbia.

Since the duties of a university lecturer include teaching, I believe the Board would agree that an attested knowledge of and a practical experience in the art of teaching are relevant to the efficient performance of the teaching duty of a university lecturer. In this regard, I hope the Board would recognise my prior teaching experience in schools and in the University of Br. Columbia and kindly consider my request for three increments above the lowest point of entry in the lecturer's scale of salary, one increment being for the 4¾ years of teaching experience in schools and two increments for the two years of experience in the University of Br. Columbia."

Subsequently Lee received a letter dated July 9, 1968 from the Pegawai Kakitangan informing him that the University Council at its meeting on June 13, 1968 agreed that Lee be promoted to lecturer and placed at the point $920 *per mensem* basic of the salary scale $920 x 40 – 1160/1200 x 45 – 1425, with effect from February 1, 1969 and be confirmed in his appointment as Lecturer in the Department of Economics and Administration on the permanent staff with effect from February 1, 1969. On October 18, 1968 Lee wrote to the Vice-Chancellor as follows:

"I wish to thank the University for confirming my appointment on the permanent staff as lecturer in the Faculty of Economics and Administration with effect from February 1, 1969, and offering me new terms and conditions of service.

It is with very much regret that I have to inform you that I am unable to accept the kind offer of the University for various personal and private reasons. I have come to this decision after having given much thought to condition affecting my personal and family affairs.

Please accept this letter as notice of my intention to terminate my service with the University at the end of my Initial Contract period, which is Jan. 31, 1969."

The Deputy Registrar of the University sent a reply dated November 29, 1968 to Lee as follows:

"I refer to your letter dated October 18, 1968, addressed to the Vice-Chancellor, giving notice that you wish to terminate your service with the University at the end of your initial contract which will expire on January 31, 1969. The University Council considered your case at its meeting held on November 14, 1968. As pointed out in my letter dated November 2, your leaving the service of the University is tied up with the Agreement dated July 26, 1964 executed by you, your two Sureties and the University when you were awarded a Colombo Plan Scholarship in 1964 to read for a Master's Degree in Business Administration at the University of British Columbia under the Canadian Colombo Plan Training Scheme in Accounting and Business Administration of this University.

Clause 1(c)(i) provides that if required by the University you will be required to serve the University for a period of not less than five years. Clause 3 further provides that if you resign or leave the service of the University in breach of the Agreement under para. 1(c) of the Agreement without the consent of the University, then you and your sureties shall be jointly and severally liable to pay the University on demand a sum of $5,000.

The Council noted the above and also the fact that the University has offered you a permanent contract as Lecturer with effect from the day following the expiry of your initial contract as Assistant Lecturer, *i.e.* February 1, 1969, which you have now declined to accept. Further, the Faculty of Economics and Administration still requires your services as its Division of Accounting is not adequately staffed. In view of this, the Council resolved that your intention of leaving the University is without the consent of the University. Accordingly, if you wish to leave the service of the University, the University demands that you and your sureties jointly and severally pay to the University the sum of $5,000 in accordance with the said Agreement."

Lee did not take up the appointment of lecturer and therefore he served the University for about 2½ years only from June 6, 1966 to January 31, 1969.

Eventually the University brought an action in the Sessions Court against Lee claiming a sum of $5,000 for Lee's breach of undertaking in the scholarship agreement to serve the University for a period of not less than five years. In the Statement of Defence Lee raised the following issues, contending that:

(a) the University entered into the scholarship agreement as agent on behalf of the Canadian Government and therefore the University itself cannot enforce it;

(b) the University's claim has been extinguished by effluxion of time, as the University Council at its meeting on 13.6.1968 agreed to appoint Lee as a lecturer and this decision was communicated to him by letter 9.7.1968 and he had not up to the time of the commencement of the action, accepted the appointment;

(c) the scholarship agreement is void as it was made without consideration;

(d) the scholarship agreement is void as its object is opposed to public policy;

(e) he had completely fulfilled or performed the scholarship agreement, having entered into the service agree-

ment, dated 3.9.1966, and he was not obliged to accept further appointment required by the University after the expiry of 12 months from the date of his return to this country;

(f) he was not obliged to accept any appointment which was not consistent with his qualifications;

(g) he was not obliged to accept any appointment which was not on a salary in accordance with the scales for the time being in force;

(h) the scholarship agreement was substituted, rescinded or altered by the service agreement, and therefore he need not thereafter perform the scholarship agreement;

(i) the University dispensed wholly or in part the performance of the scholarship agreement by entering into the service agreement, in particular clause 13 of the service agreement, which provided that he was entitled to terminate the service by giving at least three months' notice, which he did by letter dated 18.10.1968;

(j) pursuant to the service agreement he served the University for three years, and by the service agreement the University had accepted that three years' service as performance in full satisfaction of the scholarship agreement;

(k) even if he was in breach of the scholarship agreement, the University is not entitled to the sum of $5,000 which was fixed under a stipulation by way of penalty;

(l) the University had failed to mitigate its losses.

At the end of the trial the President of the Sessions Court dismissed the University's claim. The President's grounds for dismissing the claim are:

(i) The University has no *locus standi* in the matter as it was merely an agent for the Government of Malaysia; and

(ii) In the scholarship agreement there was no consideration flowing from the University.

This is an appeal by the University against the decision of the President. I do not think that the President's ground (i) can stand. It is clear from the scholarship agreement that it was entered into by the University itself as principal, and there is no evidence from which to infer that the University entered into it as agent for the Government of Malaysia. I do not think it proper to draw such inference from the fact that in 1961 the Government of the Federation of Malaya entered into an agreement with the Canadian Government concerning the latter's contribution under the Colombo Plan for the benefit of the former as the result of which the scholarship was provided by the Canadian Government and awarded to Lee. The only provisions of the agreement which may be relevant in this case are the following provisions contained in the annex to the 1961 agreement:

"It is agreed that the Government of Canada will, through the agency of the University of British Columbia whose services will be paid for by the Government of Canada, do the following:

(a) Establish and develop courses, in consultation with the University of Malaya in Kuala Lumpur, in Accountting and Business Administration;

(b) Recruit the research and teaching staff;

(c) Provide Administrative and co-ordinating staff and facilities within the University of British Columbia in Canada, to assist in the implementation of this project at the University of Malaya in Kuala Lumpur;

(d) Provide training facilities at the University of British Columbia and organize training programmes in Canada for trainees who, upon completion of their training assignment will phase out the teaching and research assignment of the University of British Columbia staff in the University of Malaya in Kuala Lumpur;

(e) Advise upon the necessary equipment, including library books, journals, business machines, and other supplies necessary to the implementation of the project.

The Government of Canada will also pay for research and training staff for the University of Malaya in Kuala Lumpur, training programmes in Canada, and equipment for the project, as recommended by the University of British Columbia."

It appears that the scholarship which was enjoyed by Lee was provided as part of the training facilities under paragraph (d) above. Lee himself did not raise in the Statement of Defence the issue that the University had no *locus standi* because it was merely an agent of the Government of Malaysia.

I shall now deal with the issues raised by Lee, first issue (a) whether the University entered into the scholarship agreement as an agent of the Canadian Government. It is true that the scholarship money was provided by the Canadian Government, but it does not necessarily follow that the Canadian Government was the principal party in the agreement and that the University took part in it as agent of the Canadian Government. There is no reason why the Canadian Government should enter into an agreement requiring the scholarship holder to serve the University. It is more appropriate that the University should be the principal party in such agreement. Nowhere is it stated that the University was acting as agent of the Canadian Government.

On the issue whether the scholarship agreement was void, it is clear that there was consideration on the part of the University. It is stated therein that the University agreed to appoint Lee to the

scholarship. If the University had not appointed him to the scholarship, he would not be able to enjoy it. The fact that the University appointed him to the scholarship was the consideration on its part for his promise to serve it for five years after completing the course which he would not be able to take without the appointment by the University. Even if there was no consideration on the part of the University, this cannot be a valid defence in view of section 4 of the Contracts (Amendment) Act 1976, which provides that notwithstanding anything to the contrary contained in the Contracts Act no scholarship agreement shall be invalidated on the ground that it lacks consideration. No attempt was made on Lee's behalf to show that the object of the scholarship agreement was against public policy. So it is not correct to say that it was void either because of lack of consideration or because of its object being against public policy. So I have disposed of issues (c) and (d).

I shall now deal with issues (f) and (g) together. The stipulation contained in clause 1(c)(i) of the scholarship agreement is extracted above. It should be noted that under that stipulation Lee had to "serve the University in any post consistent with the qualification obtained by him". The post to which he was subsequently appointed but which was rejected by him was the post of lecturer in the Faculty of Economics and Administration. He did not show by evidence or otherwise that the post of lecturer in that faculty was not consistent with his qualification. Therefore he fails on issue (f).

It should also be noted that under the stipulation contained in clause 1(c)(i) Lee had to serve the University in any post "at a salary in accordance with the scales of salaries for the time being in force relating thereto". Lee was informed of his appointment as lecturer by letter dated July 9, 1968 written by the Pegawai Kakitangan, and in paragraph 1 it is stated as follows:

> "I am pleased to advise you that the University Council at its meeting held on 13.6.1968 has agreed that you be promoted to Lecturer and placed at the point $920 *per mensem* basic of the salary scale $920 x 40 – 1160/1200 x 45 – 1425 with effect from 1.2.1969 and be confirmed in your appointment as Lecturer in the Department of Economics and Administration on the permanent staff with effect from 1.2.1969 subject to your being certified medically fit. Thereafter you will be required to enter into a new agreement for service with the University."

There is no evidence to show that the salary scale $920 x 40 – 1160/1200 x 45 – 1425 was not a salary scale for the time being in force relating to the post of a lecturer in the Faculty of Economics and Administration. The salary of $920 offered to Lee was a starting salary on that scale, and therefore it was a salary in accordance with the salary scale for a lecturer as contemplated in Clause 1(c)(i) of the scholarship agreement. The record of trial shows that Lee was trying to show by evidence that the starting salary of $920 offered to him was not commensurate with his ability which consisted of not only the qualification which he had obtained by means of the scholarship but also his previous teaching experience. It should be noted that clause 1(c)(i) does not provide that the salary must be commensurate with the qualifications and past experiences of Lee but that the post must be consistent with the qualifications and the salary must be in accordance with salary scale in force relating to that post. In the Statement of Defence Lee did not plead that the salary must be commensurate with his qualifications and past experience.

I shall now deal with issues (h), (i) and (j) together. As already stated, Clause 1(c)(i) provides that if required to do so by the University at any time within 12 months of his return to this country, Lee must serve the University in any post to which he may be appointed for a period of not less than five years. The distinction between the three things referred to in that clause should be borne in mind, *i.e.* service, post and appointment. Service is not the same thing as post or appointment. It should be noted that the clause does not say that Lee must serve in one post only. His service with the University may consist of a number of posts at different times, and there may be a number of appointments made to the respective posts at different times, so long as the total period served in the number of posts to which he would be appointed at different times should not be less than five years. On his return to this country Lee entered into the service agreement and was appointed to the post of an assistant lecturer. As already stated clause 13 of the service agreement provides that Lee may at any time terminate his *appointment* by giving not less than three months' notice. But the service agreement does not provide that Lee may at any time terminate his *service* with the University by giving notice. Nor does the service agreement provide that when his appointment is so terminated, his compulsory service with the University under the scholarship agreement is thereby terminated or completed. There is nothing in the service agreement nor in the scholarship agreement to prevent the University from requiring

Lee to serve in another post in order to complete the required five-year service, so long as the new post is also consistent with his qualifications and the salary is in accordance with the salary scale for the new post. So in my judgment the effect of clause 13 of the service agreement is not to vary the terms of the scholarship agreement at all. What actually happened in this case was that Lee gave notice to purportedly terminate his *service* with the University as from January 31, 1969. This he cannot legally do because there is no provision in the scholarship agreement or in the service agreement for terminating his *service*. When his appointment as assistant lecturer expired on January 31, 1969 pursuant to the service agreement, the University had the right under the scholarship agreement to require Lee to take up another appointment so as to complement the period of service with the University to five years. There is no evidence to show that the University had accepted the 2½ years' appointment as assistant lecturer as performance in full of the service underthe scholarship agreement.

I shall now consider issues (b) and (e). If I understand correctly, Lee's contention is that it was too late for the University in 1968 to call upon him to serve as a lecturer because under clause 1(c)(i) of the scholarship agreement the University had to inform within 12 months of his return to this country of any requirement to serve in any post. He returned to this country from Canada on June 4, 1969 and therefore according to him he must be informed before June 4, 1967. It is true that the offer of appointment as a lecturer was made after June 4, 1967, but Lee ought to have known at the time when he assumed the post of assistant lecturer in June 1966 that the service he was entering was a continuous one starting with the post of assistant lecturer to be continued with the post of a lecturer. In the letter dated June 7, 1966 wherein the offer of the appointment of assistant lecturer was made to Lee, the Registrar of the University stated as follows:

"The appointment, which is subject to the satisfactory outcome of a medical examination, is initially for a period of approximately three years terminating at the end of an academic session with a minimum of eight completed terms and a maximum of ten completed terms. Subject to satisfactory progress in your work, you will not be debarred from being considered for promotion to a Lectureship during the period of your initial contract under the present rules. However, you cannot be confirmed on the permanent establishment till after you have completed the period of your initial contract."

Together with that letter a copy of document No. 6041 was sent to Lee, which describes the general terms and conditions under which appointments in the University are made. In paragraph 1 of the document No. 6041 it is stated as follows:

"INITIAL CONTRACTS: An initial contract, on first appointment at the sub-professorial level, would be for a period of approximately three years, with a minimum of eight and a maximum of ten completed terms and expiring on the last day of the month on which the third term ends. The contract of an Assistant Lecturer will not be extended: nevertheless, he may be considered for promotion to a Lectureship, and permanency, at the end of the contract."

In the document No. 6041 the salary scales of assistant lecturer, lecturer, senior lecturer and professor are given. In his Statement of Defence Lee accepted the fact that his appointment as an assistant lecturer was compulsory service under the scholarship agreement, although in the University's letter of June 7, 1966 it was not expressly stated that the University required him to serve and it was merely stated that the appointment was offered to him. Lee rightly accepted the appointment of assistant lecturer as compulsory service and he should also accept the appointment of lecturer as compulsory service in continuation of the service as assistant lecturer until five years' service was completed. The University's letter of June 7, 1966 should be treated as requiring him to serve continuously as assistant lecturer and lecturer until completion of five years' service.

As regards issues (k) and (l), section 5 of the Contracts (Amendment) Act 1976 provides *inter alia* as follows;

"Where a scholarship agreement has been broken by the scholar, if a sum is named in the agreement as the amount to be paid in case of such breach, notwithstanding anything to the contrary contained in the Contracts Act 1950, the scholar and the surety shall be liable jointly and severally to pay and the appropriate authority shall be entitled to be paid the whole of such named sum whether or not actual damage or loss has been caused by such breach, and no deduction shall be made from the said named sum on account of any partial period of service performed by the scholar on completion of his course of study."

Lee has not shown how the University could mitigate its loss. Even if there was loss which could have been mitigated, I do not see how the judgment amount can be reduced by such loss in view of the above provisions of section 5.

The appeal is allowed, with costs to the University (appellant) here and in the Court below.

There should be judgment for the University in the sum of $5,000.

Appeal allowed.

Solicitors: *Shook Lin & Bok; Michael Chen & Lee.*

DR. JENNI IBRAHIM v. S. PAKIANATHAN

[O.C.J. (Ajaib Singh J.) December 26, 1985]

[Ipoh – Civil Suit No. 57 of 1982]

Libel and Slander – Libel – Publication – Malice – Embarrassment and humiliation suffered by plaintiff psychologist – Whether there was qualified privilege – Damages.

The plaintiff was a psychologist and had been doing voluntary consultant work as such in Pusat Pertolongan in Kampong Bercham. On September 7, 1981 the defendant wrote to the Chief Police Officer stating that for the first 5 months in 1981 a sum of $18,000 had not been entered in the statement of account of the Pusat Pertolongan although the cheques was signed by two directors one of whom was the plaintiff. Again on October 1, 1981 the defendant wrote to one Azman bin Abdul Aziz who was the secretary of the Pusat inferring that plaintiff had misappropriated $70,033.93 belonging to the Pusat. The following day he wrote to the plaintiff making the same allegation and warned that if the said sum was not reimbursed he would lodge a police report against her for breach of trust and described the plaintiff's conduct as a criminal act. On October 13, 1981 the defendant addressed to the secretary of the Pusat and proposed several resolutions one of which was that the plaintiff together with a former director had committed breach of trust of the Pusat funds amounting to $70,033.93. Copies of the said letter were sent to all the directors of the Pusat, to the Director of Welfare Services Perak and to the Registrar of Societies of Malaysia. The plaintiff sued the defendant for libel.

Held: (1) by sending copies of his letters containing serious allegations of criminal breach of trust, to various people there was sufficient publication of the libel by the defendant;

(2) there was no merit in the defence of justification as there was hardly any evidence in support. On the contrary there was ample evidence to hold that not only the allegations made by the defendant were untrue but the defendant had acted maliciously against the plaintiff;

(3) the defendant's statements exceeded the limits of fair comment and as these statements were wholly untrue and made in bad faith with the sole motive of maligning the plaintiff, the defence plea of qualified privilege failed;

(4) for the embarrassment, distress and humiliation which the plaintiff had suffered as the result of libel against her by the defendant the plaintiff is awarded a sum of $30,000 as damages.

CIVIL SUIT.

G. Moganasundram for the plaintiff.
Chin Fook Yen for the defendant.

Cur. Adv. Vult.

Ajaib Singh J.: After giving due consideration to all the evidence adduced in this case and the submissions made on behalf of the parties I have come to the conclusion that the plaintiff must succeed in her suit for libel against the defendant.

On September 7, 1981 the defendant wrote to the Chief Police Officer stating that for the first five months in 1981 a sum of $18,000 had not been entered in the statement of account although the cheques were signed by two directors Mr. Chew Peng Loon and Dr. Jenni Ibrahim. This must necessarily infer that these two directors had misappropriated the money belonging to the Pusat Pertolongan.

On October 1, 1981 the defendant wrote to Azman bin Abdul Aziz the secretary of the Pusat which clearly inferred that Dr. Jenni Ibrahim had misappropriated $70,033.93 belonging to the Pusat. The next day he wrote to Dr. Jenni Ibrahim making the same allegation and stating that she should reimburse the sum of $70,033.93 to the Pusat. This letter was sent to the plaintiff at her address in Tambun Heights and a copy sent to the plaintiff c/o Pusat Pertolongan in Kampong Bercham. On receipt of this letter at the Pusat the secretary opened it after getting the plaintiff's consent over the phone. Madam Ramjaan Begum who was then attached to the administrative office of the Pusat also read this letter as it was duly filed in the office records.

In this letter the defendant warned the plaintiff that if the sum of $70,033.93 was not reimbursed he would lodge a police report against her for breach of trust and described the plaintiff's conduct as a criminal act.

On October 13, 1981 the defendant by letter addressed to the secretary of the Pusat proposed several resolutions one of which was that the plaintiff together with a former director Yacob bin Abdul Rahman Scholer had committed breach of trust of the Pusat funds amounting to $70,033.93. The defendant sent copies of this letter to all the directors of the Pusat as well as to the Director of Welfare Services Perak and to the Registrar of Societies, Malaysia.